

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3 SUMMARY ORDER

4 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL
5 REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO
6 THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION
7 OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS
8 CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF
9 COLLATERAL ESTOPPEL OR RES JUDICATA.

10 At a stated term of the United States Court of Appeals
11 for the Second Circuit, held at the Daniel Patrick Moynihan
12 United States Courthouse, 500 Pearl Street, in the City of
13 New York, on the 15th day of September, two thousand and
14 six.

15 PRESENT: HON. RICHARD J. CARDAMONE,
16 HON. ROGER J. MINER,
17 HON. DENNIS JACOBS,

18 Circuit Judges,

19 - - - - - X
20 UNITED STATES OF AMERICA,

21 Appellee,

22
23
24 -v.-

No. 05-6980-cr

25 BERNADETTE ELAINE YOUNKER,

26
27 Defendant-Appellant.

28 - - - - -
29 X

1 **APPEARING FOR APPELLANT:** STEVEN M. STANSINGER, Federal
2 Defenders of New York, Inc.,
3 New York, NY, for Defendant-
4 Appellant.
5

6 **APPEARING FOR APPELLEE:** HARRY SANDICK, Assistant United
7 States Attorney (Michael J.
8 Garcia, United States Attorney
9 for the Southern District of
10 New York, on the brief,
11 Christine Y. Wong, Helen V.
12 Cantwell, of counsel), for
13 Appellee.

14 Appeal from a sentencing order of the United
15 States District Court for the Southern District of New
16 York (Sprizzo, J.), entered December 20, 2005.

17 **UPON DUE CONSIDERATION, it is ORDERED, ADJUDGED,**
18 **AND DECREED** that the order of the district court is
19 **AFFIRMED.**

20 Younker claims she was sentenced according to an
21 unreasonable procedure. We assume familiarity with the
22 facts, the procedural history, and the issues on
23 appeal.

24 Our review for procedural reasonableness considers
25 whether the district court properly (a) identified the
26 appropriate Guidelines range, (b) treated the
27 Guidelines as advisory, and (c) considered the
28 Guidelines together with the other factors outlined in
29 18 U.S.C. § 3553(a). United States v. Crosby, 397 F.3d
30 103, 114-15 (2d Cir. 2005).

31 Younker contends that the district court
32 unreasonably treated the guidelines as binding, citing
33 the district court's observation that it was doing "the
34 best [it] could do" in sentencing Younker according to
35 a Guideline sentence. However, other comments confirm
36 that the district court properly understood the
37 Guidelines to be advisory. The district court noted

1 that sentencing "princip[le]s are somewhat unlimited by
2 law" and refused to characterize the Guidelines as even
3 "presumptive." The district court's statements are
4 best interpreted as reflecting its conclusion that, in
5 the absence of any mitigating factor, a Guideline
6 sentence was appropriate. The district court thereby
7 complied with our mandate in Crosby: it "considered"
8 the Guidelines and the other § 3553(a) factors in
9 crafting a reasonable sentence.

10 For the foregoing reasons, the judgment of the
11 district court is affirmed.
12

13 FOR THE COURT:

14 ROSEANN B. MACKECHNIE, CLERK

15 By:

16 _____
17 Richard Alcantara, Deputy Clerk